

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Kaitlin Campbell	Team: Squad #13	CCRB Case #: 201708163	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Saturday, 07/29/2017 6:15 PM	Location of Incident: In front of § 87(2)(b)	Precinct: 42	18 Mo. SOL 1/29/2019	EO SOL 1/29/2019	
Date/Time CV Reported Wed, 10/04/2017 3:20 PM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Wed, 10/04/2017 3:20 PM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Witness(es)	Home Address
§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. POM Joseph Canale	10524	960317	PSA 7
2. POM Gregory Scott	00887	961263	PSA 7

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. SGT Sincerae Tinsley	01002	945052	042 PCT
2. POF Jandel Scarlett	19220	962783	042 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Gregory Scott	Abuse: Police Officer Gregory Scott stopped § 87(2)(b)	§ 87(2)(b)
B.POM Joseph Canale	Abuse: Police Officer Joseph Canale stopped § 87(2)(b)	§ 87(2)(b)
C.POM Joseph Canale	Force: Police Officer Joseph Canale used physical force against § 87(2)(b)	§ 87(2)(b)
D.POM Joseph Canale	Abuse: Police Officer Joseph Canale threatened § 87(2)(b) with the use of force.	§ 87(2)(b)
§ 87(4-b), § 87(2)(g)	§ 87(2)(b)	§ 87(2)(b)
§ 87(4-b), § 87(2)(g)	§ 87(2)(b)	§ 87(2)(b)
§ 87(4-b), § 87(2)(g)	§ 87(2)(b)	§ 87(2)(b)

### Case Summary

On October 4, 2017, § 87(2)(b) called the CCRB and filed this complaint.

On July 29, 2017, at approximately 5:35 p.m., § 87(2)(b) was standing in front of § 87(2)(b) in the Bronx when Police Officers Gregory Scott and Joseph Canale of Patrol Services Area 7 stopped him (**Allegations A and B: Abuse of Authority, § 87(2)(g)**). PO Canale pushed § 87(2)(b) into a wall and then threatened him with the use of force. (**Allegation C: Force, § 87(2)(g)**)(**Allegation D: Abuse of Authority, § 87(2)(g)**).

§ 87(4-b), § 87(2)(g)

### Findings and Recommendations

**Allegation (A) Abuse of Authority: Police Officer Gregory Scott stopped § 87(2)(b)**

**Allegation (B) Abuse of Authority: Police Officer Joseph Canale stopped § 87(2)(b)**

**Allegation (C) Force: Police Officer Joseph Canale used physical force against § 87(2)(b)**

**Allegation (D) Abuse of Authority: Police Officer Joseph Canale threatened § 87(2)(b) with the use of force.**

According to § 87(2)(b) he had been sitting in front of § 87(2)(b) where he lives, leaning against a three-foot partition wall with two-inch spikes on it ten feet from the entrance to the building and his friend § 87(2)(b) was standing next to him. At around 5:15 p.m., PO Scott and PO Canale approached and asked § 87(2)(b) whether he had just been smoking in the building. § 87(2)(b) argued with PO Canale about this for a couple of minutes until the officers walked away. PO Canale and PO Scott walked back toward their car on the corner of Washington Avenue and 169th Street and § 87(2)(b) got up and walked behind them. As he crossed the street to head to a bodega, he called to PO Canale and told him he should “keep [his] hands where they belong” next time. § 87(2)(b) went to the bodega and returned to the front of the building within a couple of minutes.

About thirty-five minutes later, § 87(2)(b) walked to the bodega again and saw PO Scott and PO Canale walking toward the front of his building. § 87(2)(b) walked back toward the building a couple of minutes later and saw PO Scott and PO Canale standing with their backs to the building entrance, talking to an unidentified elderly man and a girl. A crowd of ten to twelve people stood yelling at the officers that the elderly man and the girl lived in the building and asking why the officers had stopped them. § 87(2)(b) walked so that he was about ten feet away from PO Canale and PO Scott and “stuck his head out of the crowd,” trying to see over the other people.

PO Scott walked up to § 87(2)(b) and asked him if he “had something to say.” § 87(2)(b) did not say anything. PO Canale then approached § 87(2)(b) placed his right hand on the front of § 87(2)(b) s neck, wrapping his thumb around the right side and four fingers on the left side, and placed the palm of his left hand on § 87(2)(b) s sternum, and pushed § 87(2)(b) backward. § 87(2)(b) lost his footing, fell backward, and his left shoulder and lower back landed on the three-and-half-foot wall with spikes on it. He noticed a burning sensation immediately in his shoulder and back. § 87(2)(b) quickly stood up, and said: “That was some punk shit you did; that was whack—what are you doing?” PO Canale put one hand on his gun and pointed at § 87(2)(b) with his other hand and told him he had “better not get close” repeatedly. PO Canale and PO Scott walked back

to their car, got inside, and drove away. § 87(2)(b) immediately felt pain in his back and shoulder. On July 31, 2017, the pain had worsened, and § 87(2)(b) took a cab to § 87(2)(b).

§ 87(2)(b) and § 87(2)(b) said they saw PO Canale push § 87(2)(b) and that § 87(2)(b) fell backwards into the three-foot wall, landing partially on the spikes but they did not start looking until right before the push and did not have a great view. § 87(2)(b) saw the push from across the street, with § 87(2)(b)'s back facing him, and said PO Canale put two hands on § 87(2)(b)'s chest to push him. § 87(2)(b) was standing diagonally from the entrance to the building, about 25 feet away, and he said PO Canale put one hand on § 87(2)(b)'s neck and the other on his chest to push him. § 87(2)(b) was present when the officers asked § 87(2)(b) about smoking in the building but walked away and did not witness the follow-up interaction when the allegations happened. § 87(2)(b) and § 87(2)(b) were all interviewed on the same day, in front of § 87(2)(b)'s building. They all personally know § 87(2)(b).

§ 87(2)(b)'s medical records show that he was admitted to the § 87(2)(b) emergency room on July 31, 2017 at 1:35 a.m. with a chief complaint of lumbar pain and pain to his left arm. § 87(2)(b) told the admitting nurse that he had been thrown against a wall earlier that day, that he hit his back against the wall, and that his left arm hurt when he tried to move it away from his body. § 87(2)(b) was then seen by a physician who wrote in his assessment and diagnosis that § 87(2)(b) had been assaulted. On § 87(2)(b), § 87(2)(b) was admitted into the emergency room because he had run out of his pain medicine and he was seen by an orthopedic specialist, who recommended § 87(2)(b) start physical therapy. On § 87(2)(b), § 87(2)(b) had an appointment with a chiropractor who developed a plan of massage therapy and chiropractic manipulation. On § 87(2)(b), § 87(2)(b) consulted with another orthopedic surgeon and reported that his shoulder and back were injured when he was assaulted on July 29, 2017 and he had since felt continuous pain. § 87(2)(b) had nine physical therapy appointments from § 87(2)(b), and had an MRI exam taken on § 87(2)(b). The MRI found a partial tear in the tendon attaching § 87(2)(b)'s shoulder muscle to his humerus bone, enlargement of the joint between his clavicle and shoulder blade, and a tear in the cartilage lining his shoulder socket. On § 87(2)(b), § 87(2)(b) had a follow-up appointment with an orthopedic surgeon, who documented that § 87(2)(b)'s shoulder joint was not aligned properly, that he had a torn rotator cuff, and that he had an inflamed nerve in his lumbar spine and may need surgery. § 87(2)(b) took photos of his injuries and the three-foot wall with spikes on it (Board Review 06)(Board Review 07).

PO Canale and PO Scott both said they did not remember the incident but neither officer denied interacting with § 87(2)(b) on July 29, 2017.

PO Canale and PO Scott worked from 5:00 p.m. to 11:35 p.m. and were assigned to a fixed post at Washington Avenue and 169th Street, to assume a police presence, including conducting vertical patrols at § 87(2)(b) (Board Review 01). PO Canale recognized § 87(2)(b) from a photo and said he had seen him walking up and down the block at various points throughout the summer.

PO Scott recorded in his memo book that the officers conducted a vertical patrol at § 87(2)(b) beginning at 5:00 p.m., and ending at 5:35 p.m. (Board Review 02). He noted he and PO Canale conducted an "exterior patrol" at 6:00 p.m. but PO Scott said he did not remember anything about that exterior patrol and said that he and PO Canale were "most likely just sitting in the car." PO Scott said that when conducting a typical exterior patrol, they look for any crimes or violations outside the building being patrolled. PO Canale recorded in his memo book that at 4:25 p.m. he conducted a vertical patrol at § 87(2)(b) that was closed

as “non-crime corrected” at 4:50 p.m. At 4:51 p.m. he noted he backed Sector A on a job at 1458 Webster Avenue and noted at 5:05 p.m. that the final disposition of that job would be given by Sector A. At 5:30 p.m. he noted he backed Sector B at 362 Tinton Avenue and noted at 6:10 p.m. that the final for that job would be given by Sector B.

Patrol Guide Procedure 212-11 defines a stop as an encounter between a civilian and uniformed member of service in which a reasonable person would not feel free to disregard the officer and walk away (Board Review 03).

§ 87(2)(g)

Patrol Guide Procedure 221-01 states that officers will use only the reasonable force necessary to gain control of custody of a subject or protect the safety of a member of service. In determining whether force is reasonable, an officer should consider the immediacy of the perceived threat and whether the subject is actively resisting custody (Board Review 04).

§ 87(2)(g)

§ 87(2)(g)

§ 87(4-b), § 87(2)(g)

§ 87(4-b), § 87(2)(g)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

### **Civilian and Officer CCRB Histories**

- This is the first CCRB complaint to which § 87(2)(b) has been a party.
- PO Canale has been a member of service for two years and this is the first CCRB complaint to which he has been a subject.
- PO Scott has been a member of service for two years and this is the first CCRB complaint to which he has been a subject.

### **Mediation, Civil and Criminal Histories**

- This case is not eligible for mediation because § 87(2)(b) filed a Notice of Claim against the city.
  - § 87(2)(b) filed a notice of claim with the City of New York claiming negligence, assault, battery, violation of civil rights, and false arrest/false imprisonment and is seeking three million dollars in redress (Board Review 05). A 50-H hearing for the claim is scheduled for § 87(2)(b).
  - § 87(2)(b)
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

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Squad No.: 13

Investigator: \_\_\_\_\_

Signature	Print Title & Name	Date
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Squad Leader: \_\_\_\_\_

Signature	Print Title & Name	Date
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Reviewer: \_\_\_\_\_

Signature	Print Title & Name	Date
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